**IN THE HIGH COURT OF BOMBAY AT GOA**

FIRST APPEAL NO.284/2006.

National Insurance Co. Ltd.
Diamond Chambers. 2nd Floor,
18th June Road, Panaji-Goa. ..... Appellant.

Versus

1. Smt. Usha Prakash Gawas,
w/o late Prakash Vithal Gawas,
aged 34 years, housewife,
Residing at . No.32,
Halidwada, Keri, Sanquelim-Goa

2. Kumari Sapana Prakash Gawas
Minor, student,
represented by natural guardian
Smt. Usha Prakash Gawas,
w/o late Prakash Vithal Gawas,
aged 34 years, housewife,
Residing at . No.32,
Halidwada, Keri, Sanquelim-Goa

..... Respondents.

3. Kumar Tilak Prakash Gawas,
8 years, Minor, student,
representedby natural guardian,
Smt. Usha Prakash Gawas,
w/o latePrakash Vithal Gawas,
aged 34 years, housewife,
Residing at . No.32,
Halidwada, Keri, Sanquelim-Goa.

4. Kumar Ganraj Prakash Gawas
Nine months old, Minor,
represnted by natural guardian
Smt. Usha Prakash Gawas,
w/o latePrakash Vithal Gawas,
aged 34 years, housewife,
Residing at . No.32,
Halidwada, Keri, Sanquelim-Goa.

5. Shri. Shrinivas L. Mannawaddar,

S/o. Laximan Mannawaddar,
R/o. H. No.9, Ramnagar, Dharwad
Road, Joida Taluka, Uttar Kanara,
and Presently residing at C/o Anil
Photo Studio, Agarwada, Calangute
Bardez- Goa. (Deleted)

6. Shri. Gajanan Shankar Kerkar,
R/o. H. No.1280, Umtawado,
Calangute, Bardez- Goa.

Mr. E. Afonso, Advocate for the appellant.
Mr. R. S. Sardesai, Advocate for the respondents No. 1 to 4.

**Coram** :- **R. S. MOHITE, J.**

**Date** : - 12th October, 2007.

**ORAL JUDGMENT :**

Heard both sides. The Advocate for the appellant states that he is not pressing any other point except the point relating to quantum of compensation awarded. He points out that admittedly, the salary of the deceased at the time of accident was Rs. 5,408/- per month. In spite of this the compensation has been calculated on the footing that his salary during life time would have averaged up to Rs. 7,500/- per month. He points out that this enhanced salary has been arrived on the basis that deceased had promotional prospects.

He relies upon the judgment of Apex Court in the case of *Bijoy Kumar Dugar Vs. Bidya Dhar Dutta And Others, reported in 2006(3) S.C.C. 242.* Wherein, the Apex Court has held that

> *"Dependency would have to be worked on the basis of earnings of deceased at the time of accident and not on the basis of mere assertion of the claimants that he would have*

*earned certain sum in the span of his life time cannot be accepted as legitimate unless all relevant facts are proved by leading cogent and reliable evidence before Tribunal. "*

Obviously, a question whether deceased would have been got promotion is speculative. No evidence in this regard has been led. In the circumstances, I am inclined to hold that appeal is required to be partly allowed. The amount of compensation is awarded on the basis that the income of the deceased was Rs.5,408/- per month. Both the parties agree that the multiplier in this case would be 16. The amount of compensation would come to Rs. 6,92,352/-. Adding to this an amount of Rs.2,000/- towards funeral expenses, 5,000/- towards loss of consortium and Rs.2500/- towards loss of estate, the total amount comes to Rs.7,01,852/- . This amount can be rounded up to Rs.7,02,000/-

In the circumstances, the appeal is partly allowed. The appellant and the owner of vehicle i.e. respondent No.6 are held jointly and severally liable to pay compensation of Rs.7,02,000/- to the respondent Nos. 1 to 4, which will carry interest @ Rs.9 % p.a. from the date of the application till payment. The amount if any awarded in favour of respondent Nos. 1 to 4 U/s.140 of M.V. Act, shall be adjusted against this final compensation. 50 % of this compensation amount shall be apportioned in favour of respondents No. 2 to 4 being minor children of the deceased and balance 50 % amount shall be awarded in favour of respondent No.1 being the widow of the deceased. The amount payable to respondent Nos. 2 to 4 to be deposited by the Appellant in this Court within three weeks and invested by the Registrar in three equal fixed deposits on a noncumulative basis in a Nationalised Bank for a period of three years. The interest accruing to be paid to Respondent No.1 and as and when Respondent Nos. 2 to 4 attain

majority, they will be entitled to be paid their share, by breaking the deposit if necessary.

R. S. MOHITE, J.

SMA